
ENGROSSED SUBSTITUTE SENATE BILL 5778

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senators Prentice, Hargrove, Jesernig, Prince, Wojahn, Haugen, Franklin, Spanel, Fraser, Barr, Amondson, McAuliffe, Moore, Moyer, Hochstatter and Pelz)

Read first time 03/03/93.

1 AN ACT Relating to a joint underwriting association for midwives
2 and birthing centers; and adding a new chapter to Title 48 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Certified nurse midwives and licensed
5 midwives experience a major problem in both the availability and
6 affordability of malpractice insurance. In particular midwives
7 practicing outside hospital settings are unable to obtain malpractice
8 insurance at any price in this state at this time. Licensed midwives
9 have been unable to obtain hospital privileges due in part to the
10 requirement of almost all Washington hospitals that professional staff
11 members have liability insurance.

12 The services performed by midwives are in demand by many women for
13 childbirth and prenatal care. Women often choose to have a home or
14 birth center birth instead of a hospital birth. Women are entitled to
15 the provider of their choice at such a critical life event. Studies
16 document the safety of midwife-attended births and the safety of home
17 births for low-risk women.

18 At a time when safety, cost-effectiveness, and individual choice
19 are of paramount concern to the citizens of Washington state, midwifery

1 care in a variety of settings must be available to the public. This is
2 essential to the goals of increased access to maternity care and
3 increased cost-effectiveness of care, as well as addressing problems of
4 provider shortage. One of the primary impediments to the availability
5 of maternity services performed by midwives is the lack of available
6 and affordable malpractice liability insurance coverage.

7 This chapter is intended to increase the availability of cost-
8 effective, high-quality maternity care by making malpractice insurance
9 available for midwives. This chapter is implemented by requiring all
10 insurers authorized to write commercial or professional liability
11 insurance to be members of a joint underwriting association created to
12 provide malpractice insurance for midwives.

13 NEW SECTION. **Sec. 2.** Unless the context clearly requires
14 otherwise, the definitions in this section apply throughout this
15 chapter.

16 (1) "Association" means the joint underwriting association
17 established under this chapter.

18 (2) "Midwifery and birth center malpractice insurance" means
19 insurance coverage against the legal liability of the insured and
20 against loss damage or expense incident to a claim arising out of the
21 death or injury of a person as a result of negligence or malpractice in
22 rendering professional service by a licensee.

23 (3) "Licensee" means a person or facility licensed to provide
24 midwifery services under chapter 18.50, 18.88, or 18.46 RCW.

25 NEW SECTION. **Sec. 3.** The insurance commissioner shall approve by
26 December 31, 1993, a reasonable plan for the establishment of a
27 nonprofit, joint underwriting association for midwifery and birth
28 center malpractice insurance subject to the conditions and limitations
29 contained in this chapter. Such plan shall include a market assistance
30 plan to be used prior to activating a joint underwriting association.

31 NEW SECTION. **Sec. 4.** The association shall be comprised of all
32 insurers possessing a certificate of authority to write and engaged in
33 writing medical malpractice insurance within this state and general
34 casualty companies. Every insurer shall be a member of the association
35 and shall remain a member as a condition of its authority to continue
36 to transact business in this state. Only licensed midwives under

1 chapter 18.50 RCW, certified nurse midwives licensed under chapter
2 18.88 RCW, or birth centers licensed under chapter 18.46 RCW may
3 participate in the joint underwriting authority.

4 NEW SECTION. **Sec. 5.** A licensee may apply to the association to
5 purchase midwifery and birth center malpractice insurance and the
6 association shall offer a policy with liability limits of one million
7 dollars per individual and three million dollars per occurrence. The
8 insurance commissioner shall require the use of a rating plan for
9 midwifery malpractice insurance that permits rates to be modified
10 according to practice volume. Any rating plan for midwifery
11 malpractice insurance used under this section must be based on sound
12 actuarial principles. Coverage may not exclude midwives who engage in
13 home birth or birth center deliveries.

14 NEW SECTION. **Sec. 6.** The commissioner may select an insurer to
15 administer a plan established under this chapter. The insurer must be
16 admitted to transact the business of insurance of the state of
17 Washington.

18 NEW SECTION. **Sec. 7.** The insurance commissioner may not approve
19 a policy written on a claims made basis by an insurer doing business in
20 this state unless the insurer guarantees to the commissioner the
21 continued availability of suitable liability protection for midwives
22 subsequent to the discontinuance of professional practice by the
23 midwife or the sooner termination of the insurance policy by the
24 insurer for so long as there is a reasonable probability of a claim for
25 injury for which the health care provider might be liable.

26 NEW SECTION. **Sec. 8.** A risk management program for insureds of
27 the association must be established as a part of the plan. This
28 program must include but not be limited to: Investigation and analysis
29 of frequency, severity, and causes of adverse or untoward outcomes;
30 development of measures to control these injuries; systematic reporting
31 of incidents; investigation and analysis of patient complaints; and
32 education of association members to improve quality of care and risk
33 reduction.

1 NEW SECTION. **Sec. 9.** By December 1, 1996, the insurance
2 commissioner shall file or cause to be filed a report to the
3 legislature detailing the operations, finances, claims, and marketing
4 experience of the association.

5 NEW SECTION. **Sec. 10.** The commissioner may adopt all rules
6 necessary to ensure the efficient, equitable operation of the
7 association, including but not limited to, rules requiring or limiting
8 certain policy provisions.

9 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act shall
10 constitute a new chapter in Title 48 RCW.

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